



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

MAY 04 2016

Nina Bell, J.D., Executive Director  
Northwest Environmental Advocates  
P.O. Box 12187  
Portland, OR 97212-0187

Re: Response to Petition for Rulemaking on Water Quality Criteria for Toxics in the State of Washington

Dear Ms. Bell:

The U.S. Environmental Protection Agency (EPA) is responding to your petition dated October 28, 2013, and follow up letters dated August 31, 2015 and February 9, 2016. Your petition requested that the EPA take specific steps to update water quality criteria for toxics to protect human health and aquatic life in Washington.

#### Human Health Criteria

As you know, on September 14, 2015, the EPA published a proposed rule that would revise the current federal Clean Water Act human health water quality criteria applicable to waters under the state of Washington's jurisdiction to ensure that the criteria are set at levels that will protect fish consumers in Washington from exposure to toxic pollutants. The EPA's proposed rule updates the fish consumption rate based on more recent regional and local fish consumption data, as well as updates the toxicity and exposure parameters, all of which are used to calculate human health criteria. The proposal also takes into account applicable EPA policies, guidance, and legal requirements. The public comment period for the proposed federal rule closed on December 28, 2015 and the EPA is now working to respond to the comments received.

The Washington State Department of Ecology (Ecology) proposed draft human health criteria for public comment on February 3, 2016. If the state of Washington submits final criteria to EPA for approval under the Clean Water Act before EPA finalizes the federal human health water quality criteria, EPA intends to review and act upon the state's submission in a timely manner.

#### Aquatic Life Criteria

Regarding Washington's aquatic life criteria, the EPA acknowledges that Ecology has not updated the majority of these criteria since 1992, and that it is important for states and tribes to review the latest science, including EPA's national 304(a) criteria recommendations, and update criteria in a timely manner. Under the Clean Water Act, Congress gave states primary responsibility for developing and adopting water quality standards for their waters. It remains EPA's strong preference to support states in their development of water quality standards to protect state waters rather than to promulgate federal water quality standards. With this goal in mind, EPA has been encouraging Ecology to consider updates to its aquatic life criteria, and discussing potential timeframes for this work to occur. Ecology's Water Quality Program 2015-2020 Strategic Plan lists updates to criteria for aquatic life as one of the key

actions to complete in advance of the next Triennial Review process.<sup>1</sup> The EPA expects that Ecology will begin work on these aquatic life criteria revisions after completing its human health criteria rulemaking. EPA is committed to supporting Ecology as it moves forward with a rulemaking to revise the state's aquatic life criteria for toxics. This includes partnering with the Services on Endangered Species Act consultation and building upon relevant information from completed consultations on similar toxics criteria in other Region 10 states.

Specifically for copper, EPA Region 10 hosted a workshop in May 2015, which Ecology attended, to work with states and tribes on adopting EPA's 304(a) biotic ligand model (BLM) criteria recommendation for copper. In addition, EPA has been working closely with the Oregon Department of Environmental Quality to develop statewide freshwater copper aquatic life criteria. Pending Oregon's adoption of copper criteria that EPA can approve as meeting Clean Water Act requirements, EPA has itself proposed federal copper and cadmium criteria for Oregon in March 2016. EPA's proposed rule identifies scientifically defensible and protective aquatic life copper and cadmium criteria for Oregon, which other Region 10 states can use as a guide for developing statewide criteria. EPA also has been working with the Idaho Department of Environmental Quality on revisions to their aquatic life criteria for copper.

At the national level, EPA released updated 304(a) cadmium criteria recommendations in March 2016. Other work is in progress to update EPA's aquatic life 304(a) recommendations, such as for aluminum, selenium, and copper. EPA expects this work to be extremely valuable to Ecology as they review the latest science to update their aquatic life criteria.

In the meantime, EPA has a number of follow up requests concerning information provided in your petition. Your response to our information requests below will help inform EPA's decision to grant or deny your petition request.

1. NWEA has identified several toxic pollutants for which Washington does not have applicable numeric aquatic life criteria in its water quality standards, but for which EPA has issued numeric 304(a) criteria recommendations. Specifically: acrolein, carbaryl, diazinon, nonylphenol, and tributyltin. Under 303(c)(2)(B), state adoption of numeric criteria for a pollutant is only expected as a consequence of EPA developing numeric 304(a) criteria for the same pollutant if the pollutant is on the list of priority toxics and if it "could reasonably be expected to interfere with those designated uses adopted by the State, as necessary to support such designated uses." With respect to each toxic pollutant for which your petition relies, in part, on the position that Washington should have numeric criteria for a pollutant because a 304(a) numeric criterion recommendation is available: if you are aware of specific information showing that the particular toxic pollutant is present in Washington waters such that it can be expected to interfere with the attainment of Washington's designated uses, please provide it to us.
2. As your petition mentions, the Oregon and Idaho Biological Opinions concluded that CWA 303(c) approval of state water quality standards for five toxic pollutants (arsenic, copper, selenium, cyanide, and mercury), would jeopardize listed species. EPA is considering the relevance of these opinions to Washington. To that end, please provide any evidence that you may be aware of showing that the toxic pollutant concentrations specific to Washington waters are high enough to harm listed species according to the analyses in the Biological Opinions

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<sup>1</sup> See page 11: <http://www.ecy.wa.gov/programs/wq/WQStrategicPlan2015-2020.pdf>



referenced and the criteria set by existing Washington water quality standards are not protective.

3. NWEA references many concerns regarding Southern Resident killer whales (orcas) and alleges a lack of adequate protection by Washington's water quality standards. Please clarify the extent to which you believe any harm to orcas is being caused by: (a) toxic chemicals, including PBTs, present in Washington's waters that exceed the existing water quality standards, compared to (b) toxic chemicals, including PBTs, present in Washington's waters at concentrations that are meeting existing water quality standards. To the extent your belief is founded on particular evidence, please provide it to us.
4. NWEA also has provided information related to toxics contamination from stormwater discharges affecting water quality in Puget Sound and other Washington waters. Please provide further information to explain why you believe that the adoption of more stringent aquatic life criteria would address the concerns raised by the Services in the Industrial Stormwater General Permit (which you note in your August 31, 2015 letter).

In closing, we would like to thank you for your concerns related to human health and aquatic life toxics criteria in Washington. Please note that this letter does not constitute and is not intended as an Administrator determination under CWA section 303(c)(4)(B). If you have any questions concerning this letter please contact either me or Dan Opalski, Director of Region 10's Office of Water and Watersheds at (206) 553-1855.

Sincerely,



Sara Hisel-McCoy, Director  
Standards and Health Protection Division  
Office of Science & Technology

cc: Heather Bartlett, Washington Department of Ecology  
Melissa Gildersleeve, Washington Department of Ecology

